IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 527 of 1999

in

SPECIAL CIVIL APPLICATIONNo 2027 of 1999

with

LETTERS PATENT APPEAL No 395 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANTIBHAI MANGALBHAI VAGHELA

Versus

OLI & NATURAL GAS CORPORATION LTD.,

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Appearance:

1. LETTERS PATENT APPEAL No. 527 of 1999
MR NR SHAHANI for Appellants
NOTICE SERVED BY DS for Respondent No. 1, 3, 4
M/S TRIVEDI & GUPTA for Respondent No. 2

2. LETTERS PATENT APPEALNo 395 of 1999
Mr.Vyas for M/S TRIVEDI & GUPTA for Appellants

MR NR SHAHANI for Respondent No. 1

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: /08/2000

CAV JUDGEMENT (Per D.M.Dharmadhikari, CJ)

The order in this Letters Patent Appeal shall also govern the disposal of Letters Patent Appeal No. 395 of 1994 as the principal employer - Oil Natural Gas Corporation Ltd. is a common party and the claim involved of the workmen of declaration of their direct employment under the provisions of the Contract (Regulation and Abolition) Act, 1970 (hereinafter for short referred to as "the Act of 1970') are common.

2. In Letters Patent Appeal No. 527 of 1999, the workmen who are appellants are all employed as contract labour in the post of Helper and only one of the appellants Babubhai Shankarbhai Chauhan worked for some time as Helper and thereafter as Driver.

3. In Letters Patent Appeal No. 395 of 1999 preferred by the employer, all the workmen concerned in the dispute and represented by the Petroleum Employees Union are employed as contract labour on the post of Boiler Operator.

4. All the workmen who are employed as contract labour with the principal employer Oil Natural Gas Corporation Ltd. claim declaration of their direct employment with the principal employer, consequent upon issuance of notification dated 8.9.1994 under Section 10(1) of the Act of 1970 prohibiting contract labour in the post of Boiler Operator and Attendants/Helpers/Peons.

5. The legal effect of abolition of contract labour under Section 10 of the Act of 1970 was earlier a subject matter of controversy in the Law Courts but the same now stands stand settled by Three Judges Bench decision of the Supreme Court in the case of Air India Statutory Corporation Vs. United Labour Union and Others reported in AIR 1997 SC 645 and earlier decision in R.K.Panna & Others Vs. Steel Authority of India reported in (1994) 5 Supreme Court Cases 304. It is informed by the Counsel appearing that the three Judge bench decision of the Supreme Court in Air India Statutory Corporation Case

(Supra) is under consideration before the Larger Bench of the Supreme Court. But so long as the Three Judge Bench decision in the case of Air India Statutory Corporation (Supra) of the Supreme Court stands, this Court is bound by the said decision. In AIR India Statutory (Supra), it has been held that although there is no express provision in the Act to indicate as to what would be the effect of abolition of contract labour into a particular work or employment, the Court in appropriate cases would be justified in directing the employer to treat the contract labour, on abolition of contract labour system, to be in direct employment of the principal employer. The relevant observations of the Supreme Court which are binding on this court are contained in Para 59 and 65 in the opinion expressed by K.Ramaswamy, J and concurred by S.B.Majmudar, J by his separate concurring opinion:-

"59. The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinal in the qui vive i to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by catena of decisions of this Court starting from Indira Gandhi Vs. Raj Narayan, AIR 1975 SC 2299 and Bommai's case (1994 AIR SCW 2946). It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court would properly mould the relief and grant the same in accordance with law."

"65. Thus, we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under Section 10(1) of the Act, in a proper

> case, the Court as sentinal in the qui vive is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted."

6. On the observations and directions of the Supreme Court in the case of Air India Statutory Corporation (Supra) (quoted above), the only question that was before the Learned Single Judge (R.Balia, J, as he then was) in both the Special Civil Application Nos. 2027/99 (giving rise to Letters Patent Appeal No. 527 of 1999) and Special Civil Application No. 8348 of 1997 (Letters Patent Appeal No. 395 of 1999), was as to what directions for grant of relief to the workman be issued consequent upon the abolition of contract labour for the jobs on which they were working, particularly as Boiler Operators and Helpers. In Special Civil Application No. 2027 of 1999 the workmen are from the category of Helpers. The Learned Single Judge by order dated 23.3.1999 summarily dismissed the petition without notice to the employer by holding and observing that the workmen for their claims should resort to statutory remedy available in Law, meaning thereby, under the provisions of the Industrial Law.

7. In the other Special Civil Application No.8348 of 1997 pertaining to the similar claim of the workmen for a declaration of direct employment under principal employer on the post of Boiler Operator, the same Learned Single Judge (R.Balia, J as he then was) examined the facts to come to the conclusion that the status of the workmen therein of being employed as Boiler Operators was beyond controversy. The workmen of the category of Boiler Operators were therefore directed to be treated to be direct employees of the principal employer and consequential reliefs were granted.

8. Aggrieved by the order dated 25.2.1999 in Special Civil Application No. 8348 of 1999, the principal employer has preferred Letters Patent Appeal No. 395 of 1999 and aggrieved by the summary dismissal of the case by order dated 23.3.99 of the workmen of the category of Helper, the workmen have approached by way of this Letters Patent Appeal No. 527 of 1999.

9. On behalf of the workmen, Ld. Counsel Mr.N.R.Sahni contends that the Learned Single Judge was not right in adopting 2 different procedures on

considering claims of workmen of different categories who approached the Court on similar circumstances and seeking a similar declaration of direct employment under the principal employer. Ld. Counsel very strenuously urged that relegating the contract labour to the remedy of raising a industrial dispute is to leave their grievances unredressed indefinitely because dispute, such as the present one, can be raised only through th Labour Union. The workers will have to wait indefinitely for a long period for conclusion of Conciliation proceedings and if necessary, adjudication of dispute in the Industrial or Labour Court. It would be such a lengthy and cumbersome procedure as to completely exhaust their patience, more so, when the contract labour are unemployed.

10. Ld. Advocate Shri Vyas appearing for the employer placed copies of a series of judgements of different Benches of this Court in which on similar claims made by the workmen on Abolition of Contract Labour under the Act of 1970, the directions were made relegating the workmen to the statutory remedy of raising dispute under the Industrial Disputes Act. On behalf of the principal employer, it is submitted that in both the cases on the claims of contract labour, this Court should issue similar directions enabling the workmen to raise industrial disputes.

11. The legal position is beyond controversy that on abolition of contract-labour-system for certain jobs under Section 10 of the Act of 1970 the effect is direct employment of the Contract labour with the principal employer. It cannot also be seriously disputed on behalf of the workmen that some minimum facts are required to be ascertained for declaring the contract labour to be treated under direct employment of the principal employer. In the instant cases, their exists some dispute between workmen and the principal employer as to the fact of employment, nature of employment and its period. All these factual aspects will have to be determined for declaration of the employment of the workmen directly under the principal employer prospectively or retrospectively.

12. On behalf of the workmen, it was suggested that those minimum required facts can be directed to be ascertained through the Labour Commissioner of the concerned area having jurisdiction over employment in question.

13. On behalf of the employer it is submitted that only the remedy available under Section 10 of the

Industrial Disputes Act can be resorted to for the reliefs claimed by the workmen.

14. We have before us copies of number of orders passed by different Benches of this Court on such claims seeking direct employment under the principal employer on abolition of the contract labour. The orders made by this Court on 3.8.1996 in Letters Patent appeal No. 866 of 1996 (arising out of Special Civil Application No. 1903 of 1996) and in Letters Patent Appeal No. 865 of 1996 (arising out of Special Civil Application No. 1271 of 1996) were maintained by the Supreme Court by summarily rejecting the Special Leave Petitions (Special Leave Appeal (Civil) No. 102-103 of 1997 on 15.1.1997). This Court through its various Single Benches & Division Benches has been adopting a uniform course of directing contract labour with similar claims to approach the Conciliation Officer within a prescribed time to enable the employer to settle the dispute in the course of conciliation and to enable the workmen in case of failure of conciliation to seek adjudication of the dispute under Section 10 of the Industrial Disputes Act through an Industrial/Labour Court or Tribunal.

15. In our considered opinion, there should be uniformity in considering similar claims of contract labour and a deviation from such consistent course would not be conducive to administration of justice. As has been stated above some investigation into facts regarding service conditions of contract labour is necessary before granting them relief of direct employment with the principal employer. The proceedings under Article 226 of the Constitution are not appropriate for going into the factual aspects of such cases. It cannot also be denied that remedy through the Industrial Forum under the Industrial Disputes Act for individual workmen is a very cumbersome remedy and may exhaust their patience, more so, when on abolition of contract labour, they are rendered jobless.

16. In such circumstances, we feel ourselves fully justified in adopting the course as was done by the Learned Single Judge (S.D.Shah, J as he then was) in his order dated 8.7.1996 in Special Civil Application Nos. 1271 of 1996 and 1903 of 1996 which, as we have mentioned above, has obtained a seal of approval from the Supreme Court by summary dismissal of Special Leave Petition against the said order of the High Court. The Learned Single Judge, (S.D.Shah, J) has passed a common order in Special Civil Application Nos. 1271 of 1996, 1966 of 96 and 1903 of 1996.

17. We are also guided by similar orders passed by various learned judges of this Court whereby the workmen were relegated to the remedy available in the Industrial Law. After careful consideration of the submissions made by the employer and the contract labour, we dispose of these 2 appeals by making the following directions:-

i. The Contract Labour herein, particularly, in the category of Boiler Operators and Helpers/Drivers are allowed to approach the Conciliation Officer/Officers of the concerned area and having jurisdiction over the subject matter of dispute with their demands within a period of 2 months from the date of this order. On such approach, the Conciliation Officer, after notice to the employer, shall ascertain relevant facts and try to settle the dispute by negotiations with the workmen, their Unions and the principal employer through its authorised representative. The Conciliation Officer/Officers shall complete their conciliation proceedings within 3 months from the date of approach by the Contract Labour. If on facts found, a settlement is reached no further action would be required. In case of failure of conciliation, the Conciliation Officer shall submit his failure report within the above period to the appropriate Government.

ii. The appropriate Government shall within a period of 2 months from the receipt of the failure report of the Conciliation Officer make a reference of the Industrial Dispute under Section 10 of the Industrial Disputes Act to the appropriate Industrial/Labour Court.

iii. In the event of such dispute being raised under Section 10 of the Industrial Disputes Act before the Industrial Court/Labour Court/Tribunal, the said Court or Tribunal shall make an endeavour to make a final award in the case within an upper limit of 4 months from the date of receipt of reference.

18. With the above directions, both the appeals preferred by the workmen and the principal employer partly succeed. The impugned orders of the Learned Single Judge dated 23.3.1999 in Special Civil Application No. 2027 of 1999 and dated 25.2.99 in Special Civil Application No. 8348 of 1997 shall stand modified and/or substituted by the present order.

19. In the circumstances, there shall be no order as to costs in these appeals. The Civil Applications pending in these appeals stand disposed of.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J)

Ld. Counsel prays that status quo with regard to service conditions of the 3 workmen should be maintained. Since we have held that the dispute requires adjudication by the Tribunal, we do not think it proper to order maintaining of tus quo. The prayer therefore cannot be allowed.

(D.M.Dharmadhikari, CJ)

(J.M.Panchal, J)
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